

LAW OFFICES

COHN AND MARKS LLP

ROBERT B JACOBI
ROY R RUSSO
RONALD A SIEGEL
LAWRENCE N COHN
RICHARD A HELMICK
J BRIAN DE BOICE
JEROLD L JACOBS
JOSEPH M DI SCIPIO

SUSAN V SACHS
KEVIN M GOLDBERG

SUITE 300
1920 N STREET NW
WASHINGTON, D C 20036-1622

TELEPHONE (202) 293-3860
FACSIMILE (202) 293-4827
HOMEPAGE WWW COHNMARKS COM

OF COUNSEL
MARCUS COHN (1913-2001)
LEONARD H MARKS
RICHARD M SCHMIDT JR
JOEL H LEVY

DIRECT DIAL (202) 452-4827
INTERNET ADDRESS ras@cohnmarks.com

February 3, 2004

VIA HAND DELIVERY

Ms. Marlene H Dortch
Secretary
Federal Communications Commission
The Portals II, Filing Counter, TW-204
445 12th Street, S W
Washington, D C 20554

RECEIVED

FEB - 3 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: MM Docket No. 99-277
RM-9666

Dear Ms Dortch

On behalf of Channel 3 of Corpus Christi, Inc., licensee of television station KIII, Corpus Christi, Texas, there are transmitted herewith an original and eleven copies of its "Opposition to Petition for Reconsideration" responding to the "Petition for Reconsideration" filed by Minerva R Lopez in the above-captioned proceeding.

Yours very truly



Ronald A Siegel

Enclosure

cc Minerva R Lopez
Peter Tannenwald, Esq.
Margaret L Miller, Esq.
Margaret L. Tobey, Esq.
Pamela Blumenthal (by hand delivery)

No. of Copies rec'd 0 + 11
List ABCDE

ORIGINAL

RECEIVED

FEB - 3 2004

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Federal Communications Commission

In the Matter of)
)
Amendment of Section 73 622(b)) **MM Docket No. 99-277**
Table of Allotments,) **RM-9666**
Digital Television Broadcast Stations,)
(Corpus Christi, Texas))

Submitted To: Secretary, Federal Communications Commission
Washington, D.C. 20554
[To the Attention of: Chief, Video Division, Media Bureau]

OPPOSITION TO PETITION FOR RECONSIDERATION

Channel 3 of Corpus Christi, Inc., licensee of television station KIII, Corpus Christi, Texas ("KIII"), by its attorneys, pursuant to Section 1.429(f) of the Commission's rules, hereby opposes the Petition for Reconsideration filed by Minerva R. Lopez ("Lopez"), licensee of LPTV station KTVM-LP, Channel 8, Corpus Christi, Texas, in the above-referenced proceeding. Lopez requests the Commission to reconsider and reverse the Report and Order in this proceeding allotting DTV Channel 8 to Corpus Christi, Texas.

Lopez's Petition must be dismissed as untimely because, based upon the only evidence uncovered in the Commission's files, the Petition was received and therefore deemed filed on January 20, 2004 – 13 days after the January 7, 2004 filing deadline for such petitions.¹ There is attached hereto, as Attachment A, a copy of the Lopez Petition, copied from the Commission's

¹ The Report and Order was published in the Federal Register on December 8, 2003 (68 Fed. Reg. 68254) and petitions for reconsideration were required to be filed within 30 days after that publication or by January 7, 2004. See Section 1.429(d) of the Commission's Rules.

files, which contains a stamp reflecting that the Petition was received at the Commission on January 20, 2004. While a notation "FACSIMILE TO 202-418-2827" appears on the top of the first page of the Petition, KIII has no knowledge of whether or not the Petition was actually faxed to that fax number. The docket in this proceeding contains no record of the receipt of a faxed Petition. But even if it was faxed to that number, such action would not constitute a proper filing.² In addition, Lopez appears to have improperly certified the date of mailing of the service copies of the Petition.³ The fact that the Petition was late filed, combined with Lopez's history of late filed pleadings in this proceeding (see below), the false certification of the mailing of the service copies of the Petition and other filing defects,⁴ clearly warrants dismissal of the Petition without consideration of the arguments contained therein.

However, if the Commission nevertheless decides to consider the merits of the Petition, KIII is setting forth herein its response to the merits. Lopez asserts that (1) the Commission acted improperly in dismissing her initial comments in this proceeding and (2) the Commission improperly allotted DTV Channel 8 to Corpus Christi because KTMV-LP's application for a Class A television license should be afforded priority over KIII's DTV Channel 8 proposal.

² By Order released November 29, 2001, the Commission stated that pleadings filed by facsimile must be faxed to (202) 418-0187. In the Matter of Implementation of Interim Electronic Filing Procedures for Certain Commission Filings, 16 FCC Rcd 21483, 21485 (2001). Lopez's improper use of this method of filing constitutes another ground for dismissal of her Petition.

³ The Certificate of Service appended to the Petition contains a certification by Lopez that copies of the Petition were mailed to various parties, including KIII's counsel (Cohn and Marks), on January 7, 2004. However, the envelope received by Cohn and Marks (sent registered mail, return receipt requested) containing the Petition bears a postal mailing date of January 14, 2004. A copy of the envelope is attached hereto as Attachment B-1. The Petition was actually received by Cohn and Marks on January 20, 2004 (see Attachment B-2 which is a copy of the first page of the Petition which was date stamped by Cohn and Marks on the day of receipt). The January 7, 2004 date appearing on the second page of the Petition is also suspect in light of the fact that the Commission also did not receive the Petition until January 20, 2004.

⁴ For example, the Lopez Petition is wrongly directed to the Chief, Video Division, Media Bureau. The Commission's rules require the Petition to be submitted or directed to the Secretary of the Commission. See Sections 1.401(b) and 1.429(h) of the Commission's rules.

Because these assertions are unsupported and contrary to Commission precedent, they must be rejected

The Commission correctly dismissed Lopez's initial comments on the ground that these comments were late filed, having been filed 15 months after the pleading cycle ended. The Commission stated (Report and Order, p 2, note 4) "We will not accept these untimely filed comments, since the Commission's Rules do not contemplate the filing of pleadings beyond the comment period set forth in Notice of Proposed Rule Making." The dismissal of Lopez's initial comments was appropriate because she failed to comply with the filing deadline set forth in the rule making notice and Section 1.415(b) and (d) of the Commission's rules.⁵

Lopez's argument that KTMV-LP's Class A license application for Channel 8 should have been accorded priority over KIII's DTV Channel 8 proposal is likewise without merit. First, the Commission has no obligation to consider an argument, such as this one, which was not properly raised in the rule making proceeding. Second, the substantive argument advanced by Lopez has already been fully considered and correctly rejected by the Commission in a related case involving the same parties (Lopez and KIII, as well as Channel 7 of Corpus Christi, Inc.) and the same issue. By letter ruling, dated March 22, 2002,⁶ the Commission ruled that KIII's DTV Channel 8 proposal has priority over Lopez's Class A television license application. The Commission stated that, if KIII's rule making petition is granted, Lopez will be required to protect the DTV Channel 8 allotment and she will have the opportunity to file for displacement relief.

⁵ Indeed, there were no timely initial comments filed in the rule making proceeding opposing the allotment of DTV Channel 8 to Corpus Christi. Lopez's initial comments were filed 15 months late and Sound Leasing's (now Channel 7 of Corpus Christi, Inc.) initial comments were filed 3 days late (and then withdrawn by Sound Leasing) and its so-called supplemental comments were filed 10 months late.

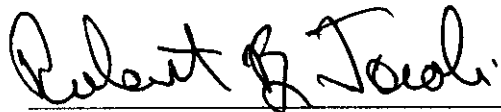
⁶ A copy of this letter ruling is attached as Attachment C for the convenience of the Commission.

Lopez cannot properly seek to re-litigate this earlier Commission ruling in the context of this rule making proceeding.⁷ This is particularly true since the Lopez Petition contains no new arguments beyond those already considered and rejected by the Commission in its letter ruling. Having ruled that KIII's DTV Channel 8 takes precedence over Lopez's Class A application, the Commission must reject the argument presented by Lopez in this rule making proceeding.

In view of the foregoing, the Commission must dismiss or, in the alternative, deny Lopez's Petition for Reconsideration and affirm its Report and Order allotting DTV Channel 8 to Corpus Christi, Texas.

Respectfully submitted

CHANNEL 3 OF CORPUS CHRISTI, INC.

By: 
Robert B. Jacobi
Ronald A. Siegel

Cohn and Marks LLP
1920 N Street, N.W., Suite 300
Washington, D.C. 20036-1622
Tel (202)-293-3860

Its Attorneys

Dated: February 3, 2004

⁷ According to the Commission's records, Lopez did not seek reconsideration of the Commission's March 22, 2002 letter ruling. Channel 7 of Corpus Christi, Inc (Channel 7) filed a petition for reconsideration of the letter ruling which was opposed by KIII. This matter is pending. However, the pendency of a petition for reconsideration does not negate the fact that the letter ruling, the effectiveness of which has not been stayed, is the controlling precedent on the issue raised by Lopez and Channel 7 and does not afford Lopez a new forum to reargue the merits of the Commission's March 22, 2002 decision.

FACSIMILE TO 202-418-2827

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

RECEIVED & INSPECTED
 JAN 20 2004
 FCC - MAILROOM

In the Matter of)	
)	
Amendment of Section 73.622(b),)	MM Docket No. 99-277
Table of Allotments,)	RM-9666
Digital Television Broadcast Stations)	
(Corpus Christi, Texas))	

To: Chief, Video Division, Media Bureau

PETITION FOR RECONSIDERATION

1. Minerva R. Lopez hereby petitions for reconsideration of the Report and Order in the above proceeding, *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Corpus Christi, Texas)*, 18 FCC Rcd 23949, DA 03-3641, rel. Nov. 19, 2003, 68 *Fed. Reg.* 68254 (Dec. 8, 2003).

2. It was wrong to make a digital allotment that displaces my Station KTMV-LP, which has a Class A application pending. BLVTA-20001220ADO. The Community Broadcasters Protection Act of 1999, 47 U.S.C. Sec. 336(f)(1)(D), permits displacement of my station only if a full power station has technical problems that require an engineering solution. In this case, KIII-TV is only seeking to save money by operating in the VHF band. There is nothing wrong with its Channel 47 digital allotment that can be resolved only by an "engineering solution" involving a change to Channel 8.

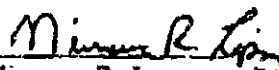
3. I am entitled to protection by the statute regardless of whether my Comments were timely or whether I filed any comments at all. Therefore, it was improper to dismiss my

No. of Copies rec'd _____
 List ABCDE _____

objection as being late filed, and it was illegal to deny my station protection from displacement.

4. Channel 7 of Corpus Christi, Inc. has elaborating on these arguments in more detail in a separate petition for reconsideration, filed January 6, 2004. I support their arguments, and KTMV-LP is entitled to the same statutory protection as KTOV-LP

Respectfully submitted.


Minerva R. Lopez

115 West Avenue D
Robstown, TX 78380
Tel. 361-289-8877

January 7, 2004

CERTIFICATE OF SERVICE

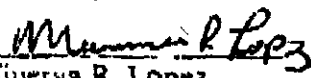
I, Minerva R. Lopez, do hereby certify that I have, this 7th day of January, 2004, caused to be sent by first class United States mail, postage prepaid, copies of the foregoing "Petition for Reconsideration" to the following.

Robert B. Jacobi, Esq.
Cohn and Marks
1920 N St., N.W., Suite 300
Washington, DC 20036
Counsel for Channel 3 of Corpus Christi, Inc.

Margaret L. Miller, Esq.
Dow, Lohnes & Albertson
1200 New Hampshire Ave., N.W., Suite 800
Washington, DC 20036-6082
Counsel for the University of Houston System

Margaret L. Tobey, Esq.
Morrison & Foerster
2000 Pennsylvania Ave., N.W., Suite 5500
Washington, DC 20006
Counsel for Alamo Public Telecommunications Council

Peter Tannenwald, Esq.
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W., Suite 200
Washington, DC 20036-3101
Counsel for Sound Leasing, Inc.


Minerva R. Lopez

蘇

CERTIFIED MAIL



7003 3110 0002 4776 6731



U.S. POSTAGE
PAID
CORPUS CHRISTI, TX
78401
JAN 14, 04
AMOUNT

\$442

Robert B Jacoby, Esq
Cohn and Winkles
1920 Nst N.W. Suite 300
Washington, D.C. 20036

RETURN RECEIPT
REQUESTED

20036+1622 22

Abstract

TEJANO MUSIC VIDEO
KTMV-Channel 8
2209 N. Padre Island Dr. - Suite S
Corpus Christi, Texas 78408

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.622(b),)	MM Docket No. 99-277
Table of Allotments,)	RM-9666
Digital Television Broadcast Stations)	
(Corpus Christi, Texas))	

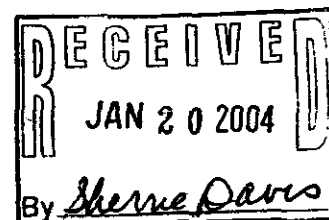
To: Chief, Video Division, Media Bureau:

PETITION FOR RECONSIDERATION

1 Minerva R. Lopez hereby petitions for reconsideration of the Report and Order in the above proceeding, *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations. (Corpus Christi, Texas)*, 18 FCC Rcd 23949, DA 03-3641, rel. Nov. 19, 2003, 68 *Fed. Reg.* 68254 (Dec. 8, 2003).

2 It was wrong to make a digital allotment that displaces my Station KTMV-LP, which has a Class A application pending, BLVTA-20001220ADO. The Community Broadcasters Protection Act of 1999, 47 U.S.C. Sec. 336(f)(1)(D), permits displacement of my station only if a full power station has technical problems that require an engineering solution. In this case, KIII-TV is only seeking to save money by operating in the VHF band. There is nothing wrong with its Channel 47 digital allotment that can be resolved only by an "engineering solution" involving a change to Channel 8.

3 I am entitled to protection by the statute regardless of whether my Comments were timely or whether I filed any comments at all. Therefore, it was improper to dismiss my





**Federal Communications Commission
Washington, D.C. 20554
MAR 22 2002**

1800E3-JLB

**Channel 3 of Corpus Christi, Inc.
c/o Robert B. Jacobi, Esq.
Cohn and Marks
Suite 300
1920 N Street, N.W.
Washington, D.C. 20036-1622**

**Minerva R. Lopez
c/o Arthur V. Belendiuk, Esq.
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W.
Suite 301
Washington, D.C. 20554**

**Sound Leasing, Inc.
c/o Peter Tannenwald, Esq.
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W.
Suite 200
Washington, D.C. 20036-3101**

**Re: Applications for Class A Licenses
Stations KTOV-LP and KTMV-LP
File Nos. BLTVA-20000905AAE
And BLTVA-20011220DO
Facility ID Nos. 42711, 68452**

Dear Counsel:

This is with respect to the petitions to deny filed by Channel 3 of Corpus Christi, Inc., the licensee of station KIII(TV), Channel 3, Corpus Christi, Texas, against the above-referenced applications for a Class A television license. Sound Leasing, Inc. and Minerva R. Lopez, the licensees of low power television stations KTOV-LP, channel 7, and KTMV-LP, channel 8, Corpus Christi, respectively, oppose the petitions.

On November 29, 1999, Congress enacted the Community Broadcasters Protection Act of 1999 (CBPA),¹ pursuant to which certain eligible low power television stations are to be accorded Class A "primary" status as a television broadcaster. Pursuant to the terms of the statute, qualified low power television licensees intending to convert to Class A status were required to submit a statement of eligibility to the Commission within 60 days of enactment of the CBPA, which was January 28, 2000. Sound and Lopez both filed timely certifications of eligibility for Class A status and were granted such certification by public notice released June 2, 2000. Subsequently, they filed the above-referenced applications for Class A licenses.

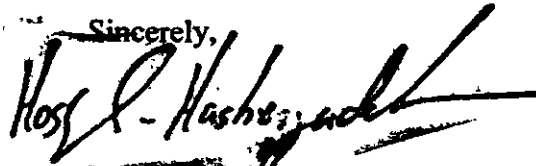
Channel 3, the licensee of television station KIII(TV), Corpus Christi, was allotted channel 47 as its DTV channel. *See Sixth Report and Order*, 12 FCC Rcd 14588 (1997). However, on February 8, 1999, Channel 3 filed a petition for rulemaking to substitute channel 8 as its DTV channel, and the Commission adopted a notice of proposed rulemaking on September 3, 1999, setting a closing comment date of November 16, 1999. In its petitions to deny, Channel 3 asserts that the DTV facility proposed in the rulemaking proceeding conflicts with the operation of the two low power television stations, and that accordingly, the Class A license applications cannot be granted. In response, Lopez and Sound both argue that because the allotment proceeding remains pending, and the allotment was not made by the date on which they filed statements of eligibility, the rulemaking proceeding does not take priority over the Class A applications.

In the Report and Order and Further Notice of Proposed Rulemaking in MM Docket No. 00-39, the Commission adopted certain processing priorities between DTV proposals and NTSC applications and rulemaking proceedings. *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 16 FCC Rcd 5946 (2001). With respect to pending petitions for rule making for new or modified DTV allotments, the Commission stated that "where a Notice of Proposed Rulemaking has been adopted and the comment deadline on the petition for rulemaking has passed, we will consider such petition as 'cut-off' as of the comment deadline, [and] applications that are filed after a DTV petition is cut-off on its comment deadline will have to protect the facilities proposed in the DTV petition." *Id.* at 5969. Here, Channel 3's rulemaking petition was cut-off as of November 16, 1999, prior to the November 29, 1999 effective date of the CBPA and the filing of statements of eligibility. Thus, Lopez and Sound will be required to protect the channel 8 allotment if Channel 3's rulemaking petition is granted. Because the Commission has not yet acted on the rulemaking proceeding, we will dismiss the petitions for reconsideration, and the license applications will remain pending. In the event that the Commission grants the requested rulemaking, Lopez and Sound will have an opportunity to file for displacement relief.

¹ Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594 - 1501A-598 (1999), *codified at* 47 U.S.C. § 336(f).

In view of the foregoing, the petitions to deny filed by Channel 3 of Corpus Christi ARE HEREBY DISMISSED. The Class A television license applications filed by Minerva R. Lopez and Sound Leasing, Inc. will remaining on file pending the outcome of the Corpus Christi rulemaking proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "Hossein Hashemzadeh", written over a horizontal line.

Hossein Hashemzadeh
Supervisory Engineer
Low Power Television Branch
Video Services Division
Mass Media Bureau

CERTIFICATE OF SERVICE

I, Barbara J. McKeever , hereby certify that I have mailed, first class U.S. mail, postage prepaid, or caused to be hand delivered, on this 3rd day of February, 2004, a copy of the foregoing "OPPOSITION TO PETITION FOR RECONSIDERATION" to the following:

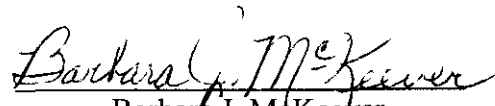
Minerva R. Lopez
115 West Avenue D
Robstown, TX 78380

Peter Tannenwald, Esq.
Jason S. Roberts, Esq
Irwin, Campbell & Tannenwald, P C
1730 Rhode Island Avenue, N.W., Suite 200
Washington, D C. 20036-3101
Counsel for Channel 7 of Corpus Christi, Inc. and
Community Broadcasters Association

Margaret L. Miller, Esq.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W , Suite 800
Washington, D.C. 20036-6082
Counsel for the University of Houston System

Margaret L. Tobey, Esq
Morrison & Foster
2000 Pennsylvania Avenue, N.W , Suite 5500
Washington, D.C 20006
Counsel for Alamo Public Telecommunications Council

Pamela Blumenthal*
Media Bureau
Federal Communications Commission
The Portals II
445 12th Street, S.W., Room 2-A860
Washington, D.C. 20554


Barbara J. McKeever

* By Hand Delivery